

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

SYLVESTER B. BERRY,
Appellant,

v.

DEPARTMENT OF JUSTICE,
Agency.

DOCKET NUMBER
HQ71218610019

DATE: November 13, 1986

BEFORE

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman
Dennis M. Devaney, Member

OPINION AND ORDER

For the reasons set forth below, appellant's appeal from a decision of the Federal Labor Relations Authority (FLRA) and from the agency removal action is DISMISSED for lack of jurisdiction. See 51 Fed. Reg. 25,149 (1986) (to be codified at 5 C.F.R. § 1201.3).*

BACKGROUND

Appellant was removed from his position as a Deputy U.S. Marshal with the Marshal's Service effective October 9, 1984, based, in part, on the allegation that he had falsified log entries in connection with his duties as a marshal. He

* On July 10, 1986, the Board republished its entire rules of practice and procedure in the Federal Register. For ease of reference, citations will be to the Board's regulations at 5 C.F.R. Part 1201. However, parties should refer to 51 Fed. Reg. 25,146-72 (1986) for the text of all references to this part.

thereafter filed a grievance pursuant to the negotiated grievance procedure. The grievance was submitted to an arbitrator who issued a decision sustaining the agency removal action on July 10, 1985. Neither party filed exceptions to the arbitrator's award which became final. See 5 U.S.C. § 7122(b); 5 C.F.R. Part 2425.

Appellant filed an unfair labor practice charge with the FLRA, pursuant to 5 U.S.C. § 7116(b), alleging a breach of the duty of fair representation by the union which represented him in the grievance and arbitration proceedings. The General Counsel of the FLRA affirmed the Regional Director's refusal to issue a complaint on May 22, 1986.

Appellant asserts that he is appealing from the May 22, 1986 FLRA decision, and, in addition, requests the Board to review the removal action taken by the agency.

ANALYSIS

The Board may only adjudicate matters which come before it which are properly within its jurisdiction pursuant to law, rule or regulation. Nothing in law, rule or regulation grants the Board authority to determine whether an action constitutes an unfair labor practice. That authority rests with the FLRA. See *Clarry v. Department of Transportation*, 18 M.S.P.R. 147 (1983); *Bodinus v. Department of Treasury*, 7 M.S.P.R. 536, 542 (1981).

The Board may review an arbitrator's decision only if an allegation of prohibited discrimination has been raised in the case. See 5 U.S.C. § 7121(d); 5 C.F.R. § 1201.154(b);

Stickles v. Veterans Administration, MSPB Docket No. HQ71218610012 at 3 (July 8, 1986). Although appellant asserts on appeal to the Board that there are "elements of racial discrimination" inherent in his removal, the record does not show that any allegation of racial discrimination was raised during the grievance proceeding or before the arbitrator.

The Board therefore lacks jurisdiction over the matters appealed.

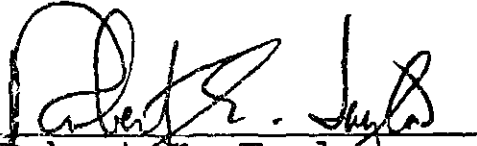
ORDER

This is the Board's final decision in this appeal.

NOTICE TO APPELLANT

You may petition the United States Court of Appeals for the Federal Circuit to review the Board's decision in your appeal, if the court has jurisdiction. 5 U.S.C. § 7703. The address of the court is 717 Madison Place, N.W., Washington, DC 20439. The court must receive the petition no later than 30 days after you or your representative receives this order.

FOR THE BOARD:


Robert E. Taylor
Clerk of the Board

Washington, DC